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September 12, 1995

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: *GEN Docket No. 90-314 - Amendment of the Commission's Rules to Establish New Personal Communications Services*

On behalf of Pacific Bell, Nevada Bell, Pacific Bell Mobile Services, and Pacific Telesis Mobile Services, please find enclosed an original and six copies of their *"Reply Comments"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314
	)	
	)	

REPLY COMMENTS OF PACIFIC BELL, NEVADA BELL, PACIFIC BELL MOBILE SERVICES AND PACIFIC TELESIS MOBILE SERVICES

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Date: September 12, 1995

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SUMMARY

This pleading responds to comments filed on our Plan of Nonstructural Safeguards Against Cross Subsidy and Discrimination in the provision of PCS services. Many of the comments are aimed at having the Commission institute further proceedings prior to consideration of our Plan. However, as we explain, there is no need for additional rulemakings.

When the Commission released its order on local exchange carrier (LEC) provision of PCS, it was well aware that we were taking steps to divest our cellular affiliate. Thus, any rules applying to local exchange companies without cellular affiliates would apply to us. Consequently, there is no merit to the view of some commenters that our situation was never considered by the Commission.

There is also no merit to the argument that the Commission intended to initiate further rulemakings on LEC provision of PCS. We are required to address the issues of cross subsidy and non-discriminatory interconnection in our Plan. The Commission has issued extensive federal accounting safeguards that operate to prevent cross subsidy in lieu of structural separation. The Commission has also policies in place with respect to non-discriminatory provision of wireless interconnection to LECs. Our plan complies with existing rules and policies.

The only outstanding issue that affects our Plan is CC Docket No. 94-54. In that docket the Commission is reviewing its policy of requiring good-faith negotiations in the provision of wireless interconnection to LECs and considering the merits of federal tariffing. We will fully comply with any new rules. Approval of our Plan can be conditioned on compliance with any new interconnection rules adopted in that proceeding. There is no need to delay consideration of our Plan during the pendency of CC Docket No. 94-54.

Many of the comments are blatant or thinly disguised attempts to seek reconsideration of the Commission's decision not to require structural separation for the LEC provision of PCS. The Commission thoroughly considered the issue. There are no changed circumstances that warrant review of this decision.

Many of the comments on the accounting safeguards evidence a great deal of confusion about how those safeguards apply in our situation. There are no joint or common costs between our landline services and PCS services. The costs of our PCS service are already separated from regulated telephony because PCS is provided by a separate subsidiary. Consistent with Commission policy, for federal accounting purposes, we are treating PCS as a nonregulated service. When the PCS subsidiary, Pacific Bell Mobile Services, uses any services of Pacific Bell or Nevada Bell, it will follow the comprehensive affiliate transaction rules. Thus, there is no potential for cross subsidy.

The development costs of PCS have been paid for by the shareholders or refunded to the ratepayers. Contrary to allegations of Cox, the NARUC audit did not find that we engaged "in extensive cross-subsidization." It raised issues about possible cross subsidization to which we replied fully in the response to the audit.

The Pacific Bell and Nevada Bell wireless interconnection offerings meet the federal requirements. None of the commenters provide any concrete examples of how Pacific Bell and Nevada Bell will not meet their interconnection needs other than the desire for physical collocation. All wireless carriers can take advantage of the collocation offered through our expanded interconnection tariffs for the placement of transmission equipment. The Commission has never ordered collocation for PCS equipment and there is no basis for ordering it in this proceeding.

The Commission's rules on LEC provision of PCS are final and sufficient. We will fully comply with these rules and policies described in our Plan and this pleading. Adoption of additional rules advocated by the commenters will only benefit our competitors to the detriment of competition and the public interest. We respectfully request that the Commission approve our Plan without delay.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314
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REPLY COMMENTS OF PACIFIC BELL, NEVADA BELL, PACIFIC BELL MOBILE SERVICES AND PACIFIC TELESIS MOBILE SERVICES

I. Introduction.

Pacific Bell ("PB"), Nevada Bell ("NB"), Pacific Bell Mobile Services ("PBMS"), and Pacific Telesis Mobile Services ("PTMS") hereby respond to the comments filed on our Personal Communications Services ("PCS") Plan of Nonstructural Safeguards against Cross Subsidy and Discrimination.

Five parties filed comments on our plan. Many of the comments expressed the view that the Commission needs to engage in additional rulemaking before the submission of a plan is appropriate. For example, Sprint Telecommunications Venture ("Sprint") states, "Before acting on the Pacific Bell Plan, the Commission must rule on several issues it has identified as important to ensure a fair regulatory environment for PCS competition, but has not yet resolved."[1] This sentiment is echoed in the comments of Cox Enterprises, Inc. ("Cox") and NexTel Communications, Inc. ("NexTel").[2] AirTouch Communications, Inc. ("AirTouch") also states,

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[1] Sprint, p. 13.

[2] Cox, p. 6; NexTel, p. 3.

"[B]ecause Pacific Bell chose to file its above-captioned plan before the Commission has finalized its rules governing such plans, Pacific Bell will be required to revise its plan to conform to the FCC's final rules."[3] Underlying this viewpoint are several common misconceptions: One, the Commission never anticipated at the time of the Second Report and Order[4] that a BOC would be able to integrate its landline service with its PCS service under a 30 MHz MTA license; two, the Commission intended to initiate further proceedings that would change the rules relating to the safeguards plan; three, the rules in place that form the basis of our safeguards plan give us too much flexibility. We correct all these fundamental misconceptions below.

II. The Commission Was Well Aware When It Released Its Order On LEC Eligibility For PCS Licenses That PB Sought To Be Eligible To Bid For A 30 MHz Block.

Cox states:

> When the decision to permit PCS/LEC integration was made, the Commission assumed LECs would seek 10 MHz BTA licenses to provide ancillary local loop services. The Commission could not have envisioned that PacTel would spin-off its cellular operations and bid top dollar to acquire one of only two 30 MHz MTA licenses available within its monopoly landline region.[5]

NexTel and AirTouch make similar arguments.[6] The commenters are wrong. In December 1992, the Pacific Telesis Group ("PTG") Board of Directors approved a plan to separate, or "spin off," PacTel Corporation and its wireless subsidiaries from PTG. During 1993, officers and employees made several ex parte visits to the Commission to discuss the issue of LEC eligibility for PCS. On February 12, 1993, several months after the Board decision, Sam Ginn, Chairman and Chief Executive Officer of PTG[7] and Ron Stowe, Vice President, PTG-

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[3] AirTouch, p. 3.

[4] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd 7700 (1993) ("Second PCS Report and Order").

[5] Cox, p. 4.

[6] NexTel, p. 12; AirTouch, p.5.

[7] Sam Ginn is now the Chief Executive Officer of AirTouch.

Washington, met separately with Chairman Quello, Commissioner Duggan and Commissioner Barrett to discuss a number of issues, including LEC eligibility for PCS. See Exhibit 1.

On August 13, 1993, E.Y. Snowden and Jim Tuthill from PB and Bill Adler from the PTG-Washington office met with Beverly Baker, Deputy Chief of the Private Radio Bureau, Linda Oliver and Randy Coleman of Commissioner Duggan's office, and Kathie Levitz, Chief of the Common Carrier Bureau and members of her staff. As the filed ex parte notice states (Exhibit 2), "If the spin-off of PacTel Companies is approved, Pacific will have no cellular affiliate in its local exchange service areas." The clear implication was that any rules relating to cellular affiliation restrictions would not apply to us.

The same point was made in an ex parte presentation on September 15, 1993, when Jack Hancock, E.Y. Snowden, and Ron Stowe met separately with Commissioner Barrett and Jeff Hoagg, Chairman Quello and Brian Fontes, and Commissioner Duggan and Randy Coleman. See Exhibit 3.

On October 22, 1993, the Commission released its Second Report and Order in GEN Docket No. 90-314, Amendment of the Commission's Rules to Establish New Personal Communications Services. In that order the Commission divided the PCS spectrum into four 10 MHz blocks, one 20 MHz block and two 30 MHz blocks.[8]

In that same order, the Commission addressed the issue of LEC eligibility. The Commission found that the public interest would be served by permitting LECs to acquire PCS licenses. It also stated "[N]o new separate subsidiary requirements are necessary for LECs (including BOCs) that provide PCS.... However, in areas where a LEC has attributable cellular interests (whether or not through a separate subsidiary), it will be eligible only for the PCS frequency blocks available for licensing to a cellular operator in its service area."[9] This language

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[8] Second PCS Report and Order, para. 26. On reconsideration, the Commission changed the allocation to three 30 MHz blocks and three 10 MHz blocks. Two of the 30 MHz blocks cover MTAs. The remaining 30 MHz block was set aside for designated entities with a serving territory being a BTA, GEN Docket No. 90-314, Memorandum Opinion and Order, 9 FCC Rcd 4957, paras. 52-62.

[9] Id. at para. 126.

clearly permitted any BOC without attributable cellular interests to be eligible for a 30 MHz license in its serving territory.

As can be seen from the discussion above, the Commission was well aware of our plans to spin off our cellular interests and bid for large PCS licenses. It was certainly capable of providing for additional restrictions, if it felt any such restrictions were necessary.

On December 16, 1993, the Commission was again reminded of our intention to bid for a 30 MHz license. On that date, we filed a letter with the Commission requesting a temporary waiver of Section 99.204 of the Commission's Rules to allow PTG or PB to apply to bid for licenses as if the spin-off had occurred. This was necessary because the rules required that eligibility be stated in the registration statement which was required to be filed in advance of the auction. We advised the Commission that the spin-off was moving forward and would be completed prior to the auction but without the waiver we would be unable to qualify for eligibility at the time the registration statement was due. Without the waiver, PB would only be eligible to bid for a 10 MHz license if the registration statement were due prior to the spin-off. The waiver was granted on January 14, 1994.[10]

Accordingly, the Commission should summarily reject claims that new rules are needed on the grounds that the Commission had not considered our situation when it provided for LEC eligibility for PCS. The record is clear that the Commission was well-informed of our plans when it announced its rules in the Second Report and Order.

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[10] In The Matter of the Request by Pacific Telesis Group and PacTel Corporation for a Waiver of Section 99.204 of the Commissioner's Rules, 10 FCC Rcd 168 (1994) ("The effect of this waiver is to permit PTG or the Bells, prior to the spin-off of PacTel, to submit applications for broadband PCS licenses greater than 10 MHz in areas in which PacTel presently operates cellular systems..."), para. 9.

III. The Rules With Respect To Our Safeguards Plan Are Final.

As noted above, the rules relating to the offering of PCS service by a LEC without attributable cellular interests are contained in the Second Report and Order. The Commission recognized that the public would benefit from the economies of scope between the provision of landline and PCS services. For this reason, the Commission declined to require that PCS be provided in a structurally separate subsidiary.[11] The Commission concluded that the current accounting rules were sufficient.[12] However, prior to the commencement of PCS service, the LEC had to have an acceptable plan for nonstructural safeguards against discrimination and cross subsidization in place and approved by the Commission.[13] These are the current rules and they are final. Nevertheless, at this late date many of the commenters seek to change these rules.

A. The Attacks On The Commission's Decision To Allow The Integration Of PCS And Landline Service Are Untimely And Invalid.

The decision to allow the provision of PCS and landline service on an integrated basis, rather than requiring structural separation, was made nearly two years ago. Several commenters find fault with this decision and seek to have it reversed or modified.

Cox states, "The Commission must revisit the adequacy of nonstructural safeguards to govern in-region LEC participation in an industry with as many critical implications as PCS."[14] Cox also argues that the federal telecommunications legislation pending in Congress supports the "need to impose stricter safeguards on LEC entry into PCS."[15]

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[11] Second PCS Report and Order, para. 126.

[12] Id. ("In addition, we do not believe that commenters have justified imposing additional cost accounting rules on LECs that provide PCS service.")

[13] Id. at para. 115 n.96.

[14] Cox, p. 52.

[15] Id. at p. 13.

AirTouch argues that the Commission must address the inconsistency of requiring structural separation in the BOC provision of cellular service and not requiring structural separation for the BOC provision of PCS. Accordingly, it states,

> until such time as the Commission decides it is in the public interest to eliminate its restrictions imposed by Section 22.903, the Commission should at least require Pacific Bell to offer its "in region" 30 MHz broadband PCS operations through a separate subsidiary consistent with the requirements of Section 22.903 or, at a bare minimum, prohibit Pacific from engaging in joint broadband PCS-wireline marketing.[16]

Sprint makes the astonishing statement that joint marketing of landline services and PCS was not specifically authorized by the Commission.[17]

All of these comments constitute untimely petitions for reconsideration of the Commission's clear decision not to require structural separation in the LEC provision of PCS service.

The Commission sought and received extensive comments on the issue of LEC eligibility for PCS. In its Second PCS Report and Order the Commission summarized the comments it received and noted that some commenters, such as Cox, opposed allowing LECs to hold PCS licenses in their service areas, regardless of whether the LEC also operates a cellular service in that area.[18] It noted other commenters sought to have LEC ownership of PCS systems conditioned on structural separation.[19] Thus, the Commission carefully considered the issue. However, it concluded that it was in the public interest to allow LECs to take advantage of potential economies of scope.

> While we recognize the concerns expressed about LEC participation in PCS, we also find that allowing LECs to participate in PCS may produce significant economies of scope between PCS and wireline networks. We believe these economies of scope will promote more rapid development of PCS and will yield a broader range of PCS services at lower costs to consumers.... Indeed, by seriously

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[16] AirTouch, p. 8.

[17] Sprint, p. 9.

[18] Second PCS Report and Order, para. 124.

[19] Id. at para. 121.

> limiting the ability of LECs to take advantage of their potential economies of scope, such requirements [structural separation] would jeopardize, if not eliminate the benefits we seek through LEC participation in PCS.[20]

AirTouch tries to attack this decision on the basis of regulatory parity. However, the Commission was well aware of the inconsistency to which AirTouch refers. In the Second PCS Report and Order, it addressed the issue specifically. "With regard to the structural separation requirement for BOCs and their cellular operations, see 47 C.F.R. Section 22.901(b), we do not believe the record in this proceeding provides enough information for us to eliminate the requirement at this time as advocated by NTIA."[21] In the Regulatory Treatment of Mobile Services proceeding, the Commission addressed the issue again. "We decline, however, to address the cellular structural requirements for the Bell Operating Companies. This issue was not contained in the Notice and evaluation of Section 22.901 of the Commission's Rules is an undertaking that would require a separate rulemaking."[22]

We have no objection to the removal of the structural separation requirement on the cellular industry. However, there is no basis for imposing the same rule on us in the meantime. AirTouch's request is in effect a request for a stay of the effectiveness of that portion of the Second PCS Report and Order until the rules for the provision of cellular service are changed. This request fails for both procedural and substantive reasons. Pursuant to the Commission's rules, a request for a stay must be filed as a separate pleading.[23] Moreover, the rule permitting integration has been effective since December 8, 1993. Thus, any stay request is untimely.

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[20] Id. at para. 126.

[21] Id. at para. 126, n.98.

[22] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, para. 218 (1994) ("Second CMRS Report and Order").

[23] 47 CFR §1.44(c).

On a substantive level AirTouch must demonstrate (i) that it is likely to succeed on the merits and (ii) that it will suffer irreparable injury if relief is withheld. In addition, it must show that the imposition of irreparable harm on other parties or injury to the public interest do not render issuance of such a stay inappropriate.[24]

AirTouch cannot meet these requirements. The Commission has already thoroughly reviewed the issue. Moreover, AirTouch provides no substantive reason why it should prevail, other than regulatory parity. As explained above, the Commission has already noted the inconsistency and declined to act on it in the context of existing rulemakings. AirTouch cannot establish irreparable injury, since it has a significant share of the wireless market and PBMS has none. In sum, there is no basis for the relief AirTouch seeks.

Sprint suggests that joint marketing needed to be specifically authorized.[25] Sprint's comments evidence a poor understanding of the meaning of "structural separation" vs. integration and the economies of scope inherent in the ability to integrate.

The Commission has had extensive experience with both structural separation and its opposite, integration, in the area of enhanced services. "Essentially, structural separation prevents the BOCs from using their existing substantial resources...requiring instead separation and/or duplication of facilities and personnel.... It imposes direct monetary costs, and results in loss of efficiencies and economies of scope."[26] "With integrated marketing and sales the BOC service representative receiving a call can offer consumers additional choices that may better suit their needs, including combinations of basic and enhanced services."[27]

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[24] Cuomo v. United States Nuclear Regulatory Com'n, 772 F.2d 972; 974 (D.C. Cir. 1985); Order Granting Stay, Amendment of Parts 15 and 16 Relating to Terminal Devices Connected to Cable Television Systems, 2 FCC Rcd 6488 (1987); Memorandum Opinion and Order, Amendment of 73.1125 and 73.1130 of the Commission's Rules, MM Docket No. 86-406, RM 5480, FCC No. 87-248 (released July 17, 1987).

[25] Sprint, p. 9.

[26] In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier One Local Exchange Company Safeguards, 6 FCC Rcd 7571, para. 8 (1991) ("Computer III Remand Order").

[27] Id. at para. 85.

In short, the Commission has clearly recognized the inefficiency and duplication involved in structural separation. In the marketing area, structural separation requires two separate sales forces; in contrast with integration there is the ability to use the same sales force to sell enhanced and basic services (or, in this case, PCS and landline services). This is exactly the kind of economy of scope that the Commission felt would benefit the public when it decided the LECs could provide PCS on an integrated basis with landline services. The Commission did not need to expressly say "joint marketing is permitted". Implicit in the decision not to require structural separation is the ability to market jointly. Moreover, in our meetings with Commissioners regarding LEC participation in PCS, we indicated our strengths as a provider included "expertise with mass market," (see Exhibits 2 and 3).

Cox argues that the pending telecommunications legislation encourages the Commission to retreat from its decision on nonstructural safeguards.[28] This is a curious position, since nothing in the House or Senate bills would require that intraLATA PCS be provided on a structurally separate basis from landline services. This is even clear from Cox's description of the legislation.[29]

Sprint notes in support of its argument that the United States District Court for the District of Columbia has imposed structural safeguards in the provision of wireless exchange services and long distances services.[30] This decision is irrelevant to the issue at hand. The Commission has not based its determinations regarding structural separation on the District Court's decisions. Moreover, the decision has been appealed.[31]

The Commission had ample basis for preferring integration over structural separation in 1993. There are no changed circumstances that warrant any need to review its choice. Furthermore, nonstructural safeguards have worked well for enhanced services. The

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[28] Cox, p. 34.

[29] Id. at n.89.

[30] Sprint, pp. 10-11.

[31] United States v. Western Electric Co., Inc. and the American Telephone and Telegraph Co., and Consolidated Cases. No. 95-5137, filed May 1, 1995.

Commission recently observed that "no formal complaints have been filed at the FCC by ESPs alleging BOC access discrimination since the Computer III Phase I Order."[32] The commenters offer no reasons why these safeguards will not work well with respect to PCS, other than conclusory statements and objections that the Commission has previously rejected.

B. The Commission Never Implied That It Would Initiate Additional Rulemaking On Structural Separation Or Accounting Rules For The LEC Provision Of PCS.

Both Cox and Sprint cite to paragraph 219 in the Second CMRS Report and Order to support their position that additional rules are contemplated.[33] Paragraph 219 in its entirety states:

> The issues raised by commenters regarding accounting, structural separation and other safeguards address important questions with regard to steps that should be taken to promote a competitive commercial mobile radio services environment in which various market participants, including both established service providers and new entrants, and including both large and small carriers, have a fair opportunity to compete for new customers in the development of new services. We believe that the Commission can play a positive role in fostering this competitive environment by examining and establishing the proper mix of safeguards designed to ensure that no CMRS provider gains an unfair competitive advantage resulting from its size or its preexisting position in a particular CMRS market. Thus, the issue of regulatory symmetry in the application of these safeguards is an important one. Although we defer this issue to a separate proceeding, we draw attention to the fact that we recognize the importance of the decisions we must make in examining these issues.[34]

In the paragraph preceding para. 219, the Commission discussed the fact that provision of cellular service required a structurally separate subsidiary and indicated that consideration of that issue would require a separate rulemaking. The issue of regulatory symmetry

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[32] In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, Notice of Proposed Rulemaking, released February 21, 1995, para. 29.

[33] Cox, p. 10; Sprint, p. 13.

[34] Second CMRS Report and Order, para. 219.

is mentioned in that context as well as in the context of small and large carriers and new and established entrants, not in the context of additional rules for the provision of PCS. Moreover, at the end of the Second CMRS Report and Order, the Commission lists seven further proceedings that it anticipates related to mobile services regulation.[35] There is no mention of a proceeding that would revisit or expand upon the rules regarding the LEC provision of PCS. This is not surprising, since the rules (accounting safeguards and LEC interconnection obligations to wireless carriers) are already established.[36]

C. Any Change In Federal Interconnection Requirements Will Apply To Pacific Bell and Nevada Bell.

The only pending issue that is related to our safeguards plan is the review of federal interconnection requirements in CC Docket No. 94-54.[37] In that proceeding, the Commission requested comment on whether to require LECs to offer interconnection to Commercial Mobile Radio Services ("CMRS") providers under tariff pursuant to Section 203, or whether to retain the current requirement that LECs establish, through good faith negotiations with CMRS providers, the rates, terms and conditions of interconnection.[38] The Commission also requested comment on aspects of revising the good faith requirements if it declined to impose a tariffing requirement.[39]

Comments and replies were filed in the Fall of 1994. When the Commission releases its decision on this issue, PB and NB will fully comply with the requirements. There is no need to require resubmission of a safeguards plan at that time. Nor is there any reason to

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[35] Id. at para. 285.

[36] 47 CFR Section 32.27 and 64 Subpart I. The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d 1275 (1986); Report No. CL-379, Declaratory Ruling 2 FCC Rcd 2910 (1987); Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369 (1989).

[37] In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, 9 FCC Rcd 5408 (1994) ("Interconnection NPRM").

[38] Id. at para. 113.

[39] Id. at para 119.

review the current interconnection requirements in the context of the safeguards plan. As discussed below, we will fully comply with the existing requirements. Approval of our safeguards plan can be conditioned on compliance with any revisions in the interconnection requirements that the Commission imposes in CC Docket No. 94-54.

IV. The Current Rules That Are The Basis Of Our Safeguards Plan Are Sufficient.

In arguing for the need for an additional rulemaking, Sprint, NexTel, and Cox all argue that the current rules are insufficient. Sprint states: "By failing to identify all the necessary elements to be included in a safeguards plan, the Commission opened the way for Pacific Bell to make a submission that fails to assure anyone that it will refrain from exploiting its monopoly in local exchange services."[40] NexTel opines that "LECs should not, however, be permitted to substitute plans of their choosing for rules adopted through a notice and comment rulemaking."[41] Cox adds, "Since its decision to allow LECs to provide PCS in their landline monopoly regions pursuant to nonstructural safeguards, the Commission has followed a pattern of deferring decisions on critical competitive issues."[42]

The commenters are incorrect. As shown above, the Commission never intended to open another proceeding relating to LEC provision of PCS, with good reason. The rules as they stand are sufficient; the rules cover the contents of a safeguards plan, protection against cross subsidy, and provision of non-discriminatory interconnection. The Commission required that accounting safeguards be imposed on PCS providers affiliated with local exchange carriers. As will be discussed below, the accounting safeguards provide a detailed and stringent system for preventing cross subsidy. In addition, Commission policies on LEC interconnection obligations with respect to wireless providers have been in place for almost a decade. The Cellular Telecommunications Industry Association ("CTIA"), which is very familiar with these issues,

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[40] Sprint, p. 12.

[41] NexTel, p. 11.

[42] Cox, p. 22.

stated in CC Docket No. 94-54: "Absent specific evidence of discrimination or unreasonable delay there is no sound reason for replacing such a successful regulatory framework."[43] Our safeguards plan incorporates these successful rules and policies.

A. The Placement Of PCS In A Separate Subsidiary Minimizes The Possibility Of Cross Subsidy

The one important thing to note with respect to cost accounting and our provision of PCS is that PCS is provided by a separate subsidiary. It is not a "fully structurally" separate subsidiary. But because of the separate subsidiary structure for accounting purposes, the costs of PCS service are already separate from regulated telephone costs.

There is no need to engage in a further separation of costs under Part 64. Furthermore, when PBMS and PTMS use the services of PB and NB as described in amendments to the PB and NB Cost Allocation Manuals("CAMs"), these transactions will constitute affiliate transactions, which are specifically governed by Part 32.27(d). The rule states that services provided to a nonregulated affiliate shall be provided at tariffed rates, or, if not tariffed, at fully distributed cost, unless the carrier can establish a prevailing price for those services. Fully distributed cost is calculated pursuant to the Commission's requirements as described by our approved CAMs.[44] Thus, Part 32.27(d) provides added protection against cross subsidy.

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[43] Comments of CTIA, CC Docket No. 94-54, September 12, 1994, p. 20.

[44] In the Matter of Separation of Costs of Regulated Telephone Services from the Costs of Nonregulated Activities, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, paras. 5 and 113 (1987).

B The Detailed Cost Accounting Safeguards Ensure That Regulated Landline Services Do Not Subsidize Nonregulated Services.

1. Our Plan Complies With The Commission's Accounting Rules.

The Commission's accounting safeguards rules and policies "constitute a realistic and reliable alternative to structural separation to protect against cross subsidy."[45] Our plan fully complies with the Commission's rules. Cox's comments, on the other hand, indicate little understanding of the rules. For example, Cox has said that "the Part 64 rules give LECs wide discretion to allocate costs between regulated and nonregulated entities..."[46] This is completely untrue. Our Cost Allocation Manual ("CAM") provides an elaborate system of cost allocation. It was approved by the Commission[47] and PB and NB are audited every year on their compliance. Cox's comments appear to assume that PCS costs will be treated as regulated costs. However, as we stated in our plan, consistent with Commission policy,[48] we are affording PCS nonregulated accounting treatment. Thus, many of Cox's comments are irrelevant.[49] Nevertheless, in the interest of clarity, a summary of the accounting rules follows.

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[45] Computer III Remand Order, para. 13.

[46] Cox, p. 25.

[47] In the Matter of Nevada Bell's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs and Pacific Bell's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, AAD 7-1692, Memorandum Opinion and Order, 3 FCC Rcd 287 (1987).

[48] Cox and Sprint both raise the issue of a Petition for Clarification that we filed related to the issue of whether CMRS services are regulated or nonregulated. Cox, p. 15; Sprint, pp. 15-16. We filed that Petition on May 19, 1994 because it was unclear whether PCS was a regulated service since it is subject to various sections of Title II and III. As we explained, in our Safeguards Plan we considered this question answered when the Commission stated in GEN Docket No. 94-90 that services that have never been subject to rate regulation are considered to be nonregulated services for federal accounting purposes. However, we did not formally withdraw our Petition because it contained an additional issue on which we sought clarification.

[49] Safeguards Plan, p. 5.

In order to ensure that the provision of nonregulated services is not subsidized by regulated service costs, the Commission set up a series of requirements. These requirements include the filing of cost allocation manuals by each carrier, annual independent audits of compliance by the carrier with its CAM, and the establishment of the Automated Reporting and Management Information System ("ARMIS").[50]

The CAM is a very detailed document describing how PB and NB allocate costs between regulated and nonregulated services.[51] It contains a list of nonregulated activities, a list of incidental activities, a chart of affiliates, a description of affiliate transactions and cost categories, and assignment/allocation procedures by account. Contrary to Cox's assertions, there is nothing "abbreviated" or "summary" about the CAM or the Part 64 cost accounting rules.

In 1991 the Commission strengthened the cost accounting rules. The new requirements were:

- Independent auditors must provide the same level of assurance for the annual CAM audit as that provided in a financial statement audit,
- Greater uniformity in cost allocation practices is encouraged to the extent feasible,
- Carriers must quantify changes in time reporting and affiliate transactions at the account level, and,
- The Common Carrier Bureau is directed to monitor the materiality thresholds used by various independent auditors to ensure that each materiality threshold is suitable for the operations of the carrier(s) for which it is employed.[52]

As we stated in our safeguards plan, PB and NB amended their respective CAMs to describe the services that will be provided to PTMS and PBMS.

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[50] Computer III Remand Order, para. 12 (citing current accounting requirements).

[51] Nevada Bell files a separate CAM.

[52] Computer III Remand Order, para. 14.

2. There Are No Joint And Common Costs Because PCS Is Provided In A Separate Subsidiary.

Cox, Sprint and NexTel all seem to assume that PB will incur costs that are common to its regulated landline service and PCS service. That is incorrect. The PCS network is separate from the wireline network. It will have its own switches, base stations and antennas which will be solely used by PBMS. The construction, management and maintenance of the PCS network will be done by employees of PBMS. PCS service is not like video dialtone in which there is a common facility that serves both basic landline telephone and video dialtone.

Some of the PCS equipment will be placed on PB and NB property, but PBMS will pay fully distributed cost for that service pursuant to the requirements of Section 32.27(d) unless there is a tariff or market price.[53] In conjunction with the placement of PBMS equipment on PB and NB sites, some PB and NB engineers are involved in site preparation on behalf of PBMS. These are also affiliate transactions governed by Section 32.27(d). In addition, as explained in the CAM, PBMS will use PB sales employees to refer sales to the PBMS sales force. Again, this is an affiliate transaction and PBMS will pay fully distributed cost for this service.

NexTel claims that our Plan is deficient because it identifies legal, management, personnel and system operations staff resources that PB will devote to its PCS affiliate, but fails to allocate any direct or joint and common costs associated with them to PCS.[54] NexTel is confused. Fully distributed cost includes all the direct, joint or common cost associated with the affiliate transaction. The "costs" appear on PB's books but are accompanied by payments received from its affiliate, PBMS. Regulated customers are made whole.

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[53] For central office space there is a market price.

[54] NexTel, p. 9.

3. The Relationship PB And NB Have With PBMS And PTMS Is Disclosed In The CAM.

NexTel urges that PB should be required to "comply with expanded cost allocation and affiliate transaction rules and to disclose the scope of its PCS affiliates' activities, including activities of related PacBell affiliates or subsidiaries involved in PCS construction and management."[55] There is no need for "expanded" rules. As explained, the current rules are quite detailed and complete. Moreover, the relationship that PTMS and PBMS have with PB and NB is already fully disclosed in their respective CAMs.[56]

4. PB And NB Must Follow The Affiliate Transaction Rules In All Transactions With PBMS.

Sprint's concerns about cost allocation evidence its confusion. Sprint raises the issue that "Pacific Bell's pricing of facilities to its PCS affiliate will likely be done as a 'special assembly' allowing Pacific Bell to use 'cost' as the basis for providing this service because the service is unique and not otherwise available."[57] This is misleading. Services for which there is no tariff or market price are required to be provided at fully distributed cost under Part 32.27(d). Fully distributed cost is calculated in accordance with Part 64 Rules and Procedures specified in PB's CAM, Section VI. PB and NB cannot fix a cost wherever they desire.

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[55] NexTel, p. 11.

[56] The relevant pages of the PB and NB CAMs are included in Exhibit A of our Plan.

[57] Sprint, pp. 16-17.

5. Sprint's Recommendations On Cost Accounting Are Unnecessary.

Sprint makes three unnecessary recommendations. One, contracts for wireless transactions between members of the Pacific Bell family should be filed with the Commission. Two, Pacific Bell should undertake more detailed separation of its PCS-related costs from its other telephony costs. Three, independent auditors should certify in their annual attestation letter that Pacific Bell is allocating properly all PCS related costs to nonregulated accounts.[58]

First, there is no need to file the contracts for wireless transactions with affiliates. The CAM already lists affiliate transactions between PB and NB, and PBMS and PTMS. The second recommendation is odd because Sprint acknowledges that "Because Pacific Bell has already spun off a separate subsidiary... such a solution would not be unreasonably costly for Pacific Bell."[59] The costs could not be more separate than they are already. They are in a separate subsidiary. Services provided to that subsidiary by PB and NB are governed by the affiliate transaction rules. Finally, the annual audits always cover all aspects of compliance with the CAM, including affiliate transactions. The Commission should reject these redundant requests.

6. State Regulations Are A Supplement To, But Not A Substitute For, Federal Regulations On Affiliate Transactions.

Sprint argues that the Commission cannot rely on state regulations to provide adequate safeguards.[60]

In our Plan we noted that transactions between affiliates are governed by a stringent set of state affiliate transaction guidelines. We never meant to imply that the Commission should rely on state regulations in discharging its responsibility to prevent cross subsidization. We included that statement simply to indicate that other requirements exist. As a general matter, we

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[58] Id. at pp. 17-18.

[59] Sprint, p. 18.

[60] Id.